



**STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

MEMORANDUM

DATE: September 30, 2009

TO: Stephanie Vaughn, Manager
DSHS Rules and Policies Assistance Unit

FROM: Lisa N.H. Yanagida, Program Manager
Policy, Program Development and Training Unit
Residential Care Services

SUBJECT: Small Business Economic Impact Statement and Cost-Benefit Analysis
for Proposed Amendments to Chapter 388-97 WAC, Nursing Homes

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services' Residential Care Services (RCS) is proposing amendments to Chapter 388-97 WAC, Nursing Homes.

The purpose of this proposed rule making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: definitions, utilization, call systems, new construction, notice and appeal rights, advance directives.
- To be consistent with Chapter 521, Laws of 2009, E2SSB 5688 clarified that domestic partners could share a room.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists to make Home and Community Services and RCS lists consistent.

- Clarified dialysis services provided in the nursing home and those provided outside the home.
- Added liability insurance requirement to rule.
- Clarified that nursing home may not need to relinquish license and cease operations if residents are relocated due to natural disasters.
- Clarified that new construction must comply with rules in effect at the time of plan approval except in cases where resident health and safety may be jeopardized.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in a Small Business Economic Impact Statement (SBEIS). Preparation of a SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as “any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.”

RCS analyzed these proposed rules and concludes that the new requirements of liability insurance may impose a new cost to the nursing home that does not have an existing contract with DSHS and does not already have liability insurance (approximately 3% licensed nursing homes do not have contracts and may be without liability insurance). The cost of liability insurance ranges in price depending on many variables such as the number of claims the nursing home has made in the past, the number of occurrences, and the length of time the administrator and director of nursing have been working. The estimated average cost for nursing home liability insurance is approximately \$300 a bed.

RCS understands that nursing homes can deduct the cost of liability insurance when taxes are filed with the Internal Revenue Service, which would mitigate the impact of the cost. RCS does not believe that the proposed rules will result in any job losses or gains for nursing homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS

RCS has determined that some of the proposed rules are “significant legislative rules” as defined by legislature. As required by RCW 34.05.328(1) (c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS

- The liability insurance requirement for all nursing homes may impose additional costs to the small number of nursing homes who may not have liability insurance.
- DSHS has shared the draft language with interested parties who participated in a stakeholder meeting to discuss the proposed rule changes. At the meeting, liability insurance was brought up by a stakeholder as a potential cost.
- In addition, the draft language was posted on the Aging and Disability Services Administration internet website for anyone in the public to review and comment.
- DSHS used the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, the department has received and considered all written comments on the draft language and one comment on the cost impact for the proposed liability insurance requirement.

COST SAVINGS

Clarity of the proposed rule will save providers costs in time and dollars by:

- Reducing unnecessary confusion, citations, hearings and appeals;
- Reducing time and legal costs of appealing unclear rules;
- Reducing amount of technical support requests and dear provider letters mailed to providers for clarification of rule issues which reduces the amount of time providers need to keep current with requirements.

OTHER BENEFITS

The rules result in several benefits which include:

- The liability insurance requirement will provide a consistent standard among those with contracts with DSHS and those without contracts.
- The liability insurance requirement will provide all residents with another level of consumer protection.
- The liability insurance requirement can help nursing homes defend themselves and pay awarded damages without threatening their financial stability.
- The amendments are clearer, and easier to read, understand and apply; and
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements.

CONCLUSION

RCS concludes that the benefits of the proposed amendments exceed any possible cost. These rules continue to implement state laws and regulations related to nursing homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by email at yanagln2@dshs.wa.gov or by telephone at (360) 725-2589 if you have questions.